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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE DENIAL BY)
THE CITY OF SEATTLE OF A)
SUBSTANTIAL DEVELOPMENT PERMIT)
TO THE SOCIETY OF ST. VINCENT)
DE PAUL)
SOCIETY OF ST. VINCENT)
DE PAUL,)
Appellant,)
v.)
CITY OF SEATTLE,)
Respondent.)

SHB No. 227

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER: Robert E. Beaty, Member.

The case at hand is an appeal from a denial by the City of Seattle of a substantial development permit for the Society of St. Vincent de Paul in the City of Seattle. Hearings on this matter were held in Seattle by the Shorelines Hearings Board on October 13 and 14, 1976. Members present were: Art Brown, Chairman; Robert E. Beaty; Gordon Y. Ericksen; William A. Johnson, and Chris Smith. Ellen D. Peterson,

1 hearing examiner, presided.

2 Appellant appeared through its attorneys James D. Rolfe and Erik
3 Rosenquist; the City of Seattle appeared through Ross Radley, Assistant
4 Corporation Counsel.

5 From testimony heard, exhibits examined, and arguments and briefs
6 considered, the Shorelines Hearings Board makes these

7 FINDINGS OF FACT

8 I

9 The Society of St. Vincent de Paul in the City of Seattle (herein-
10 after referred to as St. Vincent's) applied to the City of Seattle for
11 a substantial development permit on February 4, 1976. St. Vincent's
12 proposed to build an open boat moorage, a new store facility and a new
13 office at the present site of its Lake Union store. After extensive
14 negotiations and attempts by the City to locate another site for the
15 project, the permit was denied by the City on May 17, 1976. Paul Schell,
16 on behalf of the City, stated that the existing uses of the site
17 constituted warehousing and manufacturing which were not permitted under
18 the draft Shoreline Master Program which classified warehousing and
19 manufacturing as nonconforming uses in the Urban Stable Lake Union
20 Environment. In addition, if only retail sales, a permitted use, were
21 to take place in the new store, a permit could still not be granted to
22 a nonconforming use. Further, the City asserted the proposal did not
23 provide for public access and a 35 percent view corridor. Finally, the
24 City concluded that St. Vincent's should be encouraged to relocate
25 under Goal 5 of the Goals and Policies of the Shoreline Master Program
26 which calls for relocation of "inappropriate" uses. An "inappropriate

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1 use is a non-water-dependent use under the sixth draft of the Seattle
2 Shoreline Master Program. No objection was made to the marina proposal.

3 The Goals and Policies Section of the Seattle Shoreline Master
4 Program was adopted by the Seattle City Council on February 2, 1976.
5 The Shoreline Master Program in its entirety was adopted by the City
6 Council on March 29, 1976. With this brief chronology in mind, we now
7 turn to the background of the proposal before us.

8 II

9 St. Vincent's occupies a 128,394 square foot site on the southwest
10 shore of Lake Union. The overall shape of the lot, including underwater
11 portions, is a trapezium with an irregular shaped land area of
12 approximately 85,300 square feet. St. Vincent's has done business
13 on the site since 1945 in a neighborhood devoted to commercial and
14 industrial uses under the applicable zoning code. The Society of
15 St. Vincent de Paul is a charitable enterprise which collects donations
16 from the public and does minimal restoration work for retail sale at a
17 price substantially below similar new products. The enterprise is
18 conducted in a series of old buildings (pictured in Exhibit R-7), which
19 could charitably be described as dilapidated. In addition, the goods
20 spill out into the adjoining yards where they present an unsightly
21 appearance. Parking at the present site is inadequate, and customers
22 are required to park on the adjoining rail and street rights of way.
23 The proposed plan would consolidate the inventory primarily under one
24 roof and eliminate outdoor storage. In addition, off-street customer
25 parking would be provided.

26 St. Vincent's inventory is primarily derived from donations

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1 collected by its fleet of nine trucks which deliver to the Lake Union
2 site where goods are sorted for usefulness and distributed among
3 St. Vincent's five Seattle-area retail stores. Over 50 percent of the
4 goods received are shipped to the four branch stores. The goods retained
5 for sale at the Lake Union store turn over every 45 to 60 days.

6 III

7 In addition to receiving and distributing goods, pricing and some
8 restoration activity occurs at the Lake Union store. Specifically,
9 upholstered furniture is fumigated and in some instances reupholstered;
10 but little carpentry or painting is performed on furniture. Some
11 appliances are reconditioned on site to the extent of replacing a
12 transmission in a washing machine or a compressor in a refrigerator.
13 Small appliances are either cleaned and re-sold or junked if unserviceable.
14 Apparently some body work and painting of cars occurs on site. Some rag
15 and metal salvage occurs at the store, though in response to declining
16 markets this part of St. Vincent's business has tapered off in recent
17 years. In the first eight months of 1976 approximately 7.23 percent of
18 St. Vincent's gross sales were derived from rag and metal salvage.
19 Appellant has stated that it will discontinue the salvage aspects of its
20 operation if this project is approved. No manufacturing, in the sense
21 of transforming raw materials into a finished product, occurs at the
22 site. No evidence was offered to show that problems such as noise, odor,
23 or other nuisances traditionally associated with those industrial uses
24 prohibited in commercial zones have occurred at the site. See generally,
25 4 Williams, American Land Planning Law, 99.06.

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IV

As a guide to the business of St. Vincent's, a specific breakdown of dollars derived from retail sales activities at the site follows (see Exhibit A-4):

LAKE UNION STORE

	Dollar Gross Sales	% of Total Gross Sales (rounded to nearest 0.01%)
Clothing	\$ 25,585	13.35
Household items	14,518	7.58
Furniture	37,590	19.62
Reconditioned furniture	7,843	4.09
Hardware	49,388	25.77
Large appliances	31,965	16.68
TVs	4,802	2.51
Small appliances	6,083	3.17
Rags and metal	<u>13,849</u>	<u>7.23</u>
TOTAL	\$191,623	100.00%

The total lot area (including underwater portions) devoted to the uses enumerated herein is as follows (see Exhibit A-11):

SHIPPING & RECEIVING	5,500 SF	4.3%
SALES ENCLOSED	11,545 SF	9.0%
SALES COVERED OPEN	5,500 SF	4.3%
SALES OPEN	12,650 SF	10.0%
OUT OF SEASON STORAGE	1,100 SF	0.9%
TEMPORARY OPEN STORAGE	1,800 SF	1.4%

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1	SHOP	5,284 SF	4.1%
2	OFFICE	2,600 SF	2.0%
3	SORTING AND PRICING	3,600 SF	2.8%
4	STOCK	1,600 SF	1.2%

5 We discuss these uses at some length insofar as we are trying to
6 characterize the nature of St. Vincent de Paul's operation.

7 V

8 What is the extent of those services construable as "warehousing"
9 for the five St. Vincent de Paul stores? The lot area devoted to
10 shipping and receiving, storage, pricing and sorting, repairing and
11 fumigating amounts to no more than 12 percent of the total area utilized.
12 Part of this would be used for the Lake Union store in any event.

13 VI

14 No discussion of view corridor alternatives available occurred
15 between the City and St. Vincent's. The Board is satisfied that if
16 construction were permitted on the lot, view corridor requirements
17 could be met. All parties agreed that one such workable scheme was
18 presented in Exhibit A-11.

19 Proposed designs were apparently never considered by the City,
20 though we find that they were made available to the Office of
21 Community Development in a timely manner.

22 VII

23 Any Conclusion of Law hereinafter cited, which should be deemed
24 a Finding of Fact is hereby adopted as such.

25
26
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CONCLUSIONS OF LAW

I

The Shorelines Hearings Board has jurisdiction of the parties and of the subject matter of this hearing.

II

It appears that the primary issue before the Board in this instance is the categorization of the uses at this site. Insofar as the "manufacturing" aspect of this enterprise is concerned, we conclude that the preparation of donated second hand articles for resale is not manufacturing. What occurs at St. Vincent's is not primarily the transformation of raw materials into a new product. Morin v. Johnson, 49 Wn.2d 275 (1956). While not determinative of the matter at hand, Morin does provide a useful definition. Even if the activity at this site were "manufacturing" in the sense intended, we would have to conclude that it is ancillary to the primary use which is the retail sale of second hand goods. The respondent has urged no law upon us which would otherwise classify St. Vincent's sales activity. If the retail sale of second hand goods is permitted, we would conclude that some degree of restoration and fumigation necessarily must accompany this use. Insofar as the restoration of appliances goes, appliance repair alone also would appear to be commercial activity as distinguished from manufacturing. We note that appliance repair is treated as an outright commercial use in the Seattle zoning code, for instance. If either of these activities were industrial, they would appear to be ancillary to the predominant retail use and do not present the sort of nuisance problems that make

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1 industrial activities undesirable neighbors.

2 III

3 We now approach the subject of warehousing. Warehousing would
4 appear to occur at St. Vincent's to the extent that the goods collected
5 from around the City are unloaded here and distributed to other stores.
6 The evidence before the Board indicates that this may be a tolerated
7 ancillary use for retail business. See generally, 101 CJS Zoning, 175,
8 citing Haupt v. LaBrea Heating and Air Conditioning, 284 P.2d 985,
9 133 Cal. A. 2d Supp. 784 (1955). In any event, the goods collected
10 have to be offloaded at some point. The redistribution of the goods
11 from the Lake Union store appears to be the bone which has stuck in the
12 City's throat. In our opinion this is an incidental part of the overall
13 operation at the site. Given that portion of the facility devoted to
14 storage of the goods and the short term involved, it appears that
15 warehousing is an ancillary use at the Lake Union store and is thus
16 permitted. It would also be significant if it were demonstrated that
17 warehousing, to whatever extent it existed on the Lake Union site,
18 somehow affected the adjoining commercial zone adversely.

19 IV

20 Inasmuch as we have found the St. Vincent operation in conformity
21 with the Master Program, it is unnecessary to rule on its ascertain-
22 ability or enforceability.

23 V

24 We do not construe salvage operations as a commercial-retail use,
25 but they are to be discontinued and will not be allowed under the
26 permit for a second hand retail operation. Repair of automobiles is

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1 outside the scope of the second hand store, but it also is to cease.

2 VI

3 We are satisfied that the 35 percent view corridor requirement
4 can be met on this site. While the Master Plan language is not a
5 model of clarity, it would appear that devoting 35 percent of the land
6 area to view corridors running from the street to the water would
7 constitute substantial compliance with this requirement. If necessary
8 for an unobstructed view, parking areas should be excavated to below
9 street level. It is unnecessary to decide what would comprise
10 compliance under other hypothetical building arrangements on the site.
11 Absent some other solution satisfactory to both parties, the Board is
12 satisfied that a proposal such as that embodied in Exhibit A-11
13 would satisfy the requirements of the Seattle Shoreline Master Program.

14 VII

15 In the course of the hearings on this matter, it was suggested by
16 the City of Seattle that it never received a complete or adequate
17 application for a shoreline substantial development permit. We agree
18 that the application as submitted by the applicant's architect was
19 woefully vague. However, we believe that the City had every opportunity
20 to request further information and failed to do so, although it was
21 available during its consideration of the proposed development.
22 Further, the permit was not refused on the ground of vagueness or
23 incompleteness of the application. For these reasons, the Board does
24 not see fit to deny the permit on the grounds of an inadequate
25 application when, under these circumstances, the only parties before us
26 are the permittee and the permit granting authority.

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VIII

Insofar as the Seattle Shoreline Master Program purports to require the City to help nonconforming uses relocate, the Office of Community Development appears to have met its requirement were this a nonconforming use. St. Vincent's is in no way water-dependent, but it has provided a public access to the shoreline and is operating a marina at the site. These uses mitigate the nonwater-dependent character of the retail store. As to the argument that manufacturing and warehousing must be water-dependent in the Lake Union Urban Stable Environment, we have found that this is primarily a permitted retail use and thus, by the City's own analysis, not required to be water-dependent.

IX

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Shorelines Hearings Board issues this

ORDER

The Substantial Development Permit Application SMA #76-5 by the Society of St. Vincent de Paul is hereby remanded to the City of Seattle for action not inconsistent with this opinion and subject to these conditions:

1. The Board will approve a view corridor plan consistent with that proposed at this hearing. If necessary, parking areas will be excavated to provide a clear line of sight.

2. The Board will not rule at this time on the specific configuration of the project proposed. This is an area in which it is

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1 appropriate for the City's experts to deal with the applicant. Suffice
2 it to say the proposal before the Board seems adequate and any undue
3 delay over design of the project would be inappropriate.

4 3. Nonconforming activities such as automobile repair and salvage
5 operations shall be discontinued at the Lake Union site.

6 4. No goods or materials shall be stored out-of-doors.

7 5. Adequate provision for separation of petroleum waste from
8 parking lot runoff will be provided.

9 6. Applicant will provide public access to the shoreline during
10 daylight hours.

11 7. Applicant will not substantially change the nature of its
12 operation as described herein during the life of this permit.

13 DATED this 14th day of January, 1977.

14 SHORELINES HEARINGS BOARD

15 Art Brown
16 ART BROWN, Chairman

17 Robert E. Beaty
18 ROBERT E. BEATY, Member

19 Gordon Y. Bricksen
20 GORDON Y. BRICKSEN, Member

21 William A. Johnson
22 WILLIAM A. JOHNSON, Member

23 (See dissent)
24 CHRIS SMITH, Member

25 (Did not participate)
W. A. GISSBERG, Member

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1 Smith, Chris, I dissent. (See Finding of Fact V and Conclusion of
2 Law III).

3 In analyzing a shoreline permit application we must examine the
4 intended use of the property, as well as the nature and extent of the
5 substantial developments to be constructed. (See SHB 216, Department of
6 Ecology and Attorney General v. Nichols Bros. Boat Builders, Inc.)

7 While no shoreline development may be permitted which is in conflict
8 with the underlying zoning, a development permissible under zoning may
9 be denied through application of the use provisions of the Shoreline
10 Master Program.

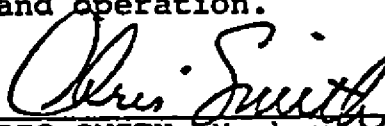
11 All goods donated to St. Vincent de Paul are delivered to the Lake
12 Union site, where they are sorted, processed (if necessary), priced, and
13 distributed for retail sale. Appellant testified that usually 45 to
14 50 percent of the goods are sold at the Lake Union retail outlet. The
15 percentage is reduced at present (to approximately 33 percent) in
16 anticipation of construction (see Exhibit A-5). A substantial part of
17 the land area of the site (see Exhibit A-3) and of the employees' time
18 is devoted to the handling of goods destined to be shipped to other
19 retail outlets. Warehousing, to the extent it exceeds the operations
20 necessary to operation of the on-site retail facility, is a separate
21 "use."

22 Section 21A.78 of the Seattle Shoreline Master Program says:
23 "Wholesaling and/or warehousing are permitted only as an accessory use
24 serving a water-dependent principal use." The retail store, assuming
25 it to be the "principal use" of the site, fails to meet the "water-
26 dependent" test of the Master Program (Section 21A.153, p. 60); hence

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warehousing is not a permissible accessory use.

The proposed substantial development would provide improved and expanded marina facilities, provide easy access to Lake Union to a large group of people, and notably improve the appearance of the site. I hope that St. Vincent's and the City will continue to explore alternative sites for the warehousing inventory and operation.


CHRIS SMITH, Member